

Appl. No. 10/647,521

Attorney Docket No. 10541-1832

## **II. Remarks**

Reconsideration and re-examination of this application in view of the above amendments and the following remarks is herein respectfully requested. Claims 1-8, 11 and 12 remain pending. No claims have been amended, cancelled or added.

### ***Claim Rejections - 35 U.S.C. §103(a)***

Claims 1-8, 11, and 12 were rejected under 35 U.S.C. § 102(e) as being anticipated by U.S. Patent No. 6,739,388, to Nakagawa, et al. ("Nakagawa"). Applicants respectfully traverse these rejections.

Claims 1-5, 7, 8, 11, and 12 were rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 6,278,083, to Schwartz ("Schwartz"). Applicants respectfully traverse these rejections.

The examiner contends that Nakagawa and Schwartz both individually disclose a vehicle temperature control system including a housing having an intake opening for air input upstream of a blower and output opening for output air, an evaporator core disposed in the housing, a heater core disposed in the housing downstream from the evaporator core in a generally side by side relationship, the second portion of the heater core being closer to the output opening than the first portion of the heater core and a separation wall or fixed air deflector having a first end and second end, the first end being attached to a first



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portion of the heater core and extending at least partially along the length of the heater core in the space between the evaporator core and the heater core.

Claim 1 was previously amended to include additional elements. First, claim 1 has been amended to recite that the evaporator core has an input face and an output face. Furthermore, the output face of the evaporator core substantially faces the output face of the heater core.

Additionally, claim 1 has been amended to recite that the length of the evaporator core defines a first plane and the length of the heater core defines a second plane and that the first plane is substantially parallel to the second plane.

The examiner admits that the output face of the evaporator core does not substantially face the output face of the heater core in both Nakagawa and Schwartz. Furthermore, the examiner admits that the planes defined by the evaporator core and the heater core of Schwartz are not substantially parallel.

The examiner has been unable to cite any references that disclose the elements noted missing from Nakagawa and Schwartz but claimed in claim 1. In an effort to make up for this deficiency, the examiner simply states that these differences are a simple rearrangement of the parts. However, "The mere fact that a worker in the art could rearrange the parts of the reference device to meet the terms of the claims on appeal is not by itself sufficient to support a finding of obviousness. The prior art must provide a motivation or reason for the worker in the art, without the benefit of appellant's specification, to make the necessary changes in the reference device." *Ex parte Chicago Rawhide Mfg. Co.*, 223 USPQ 351, 353 (Bd. Pat. App. & Inter. 1984). As such, none of the cited

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references disclose any motivation to situate the evaporator such that it substantially faces the output face, as claimed in claim 1.

Since not all of the elements in amended claim 1 are disclosed in the references and there is no motivation or reason for the worker in the art, without the benefit of appellant's specification, to make the necessary changes in the reference device, the rejection under 35 U.S.C. § 102 is improper and should be withdrawn.

As to the remaining claims, these claims are all dependant on claim 1 and are therefore for at least the same reasons given above in support of claim 1. As such, allowance of these claims is respectfully requested.

### *Conclusion*

In view of the above amendments and remarks, it is respectfully submitted that the present form of the claims are patentably distinguishable over the art of record and that this application is now in condition for allowance. Such action is requested.

Respectfully submitted,

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Date

  
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Attachments: None



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